

KENNETH L. WILBUR

IBLA 82-757

Decided June 17, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. I MC 48355.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Thus, a mining claim located in December 1979 for which neither a notice of intention to hold or evidence of assessment work was recorded before Dec. 31, 1980, both in the county where the location notice is recorded and in the proper BLM office, is properly declared abandoned and void.

APPEARANCES: Kenneth L. Wilbur, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Kenneth L. Wilbur appeals the Idaho State Office, Bureau of Land Management (BLM), decision of April 6, 1982, which declared the unpatented Ding Bat #1 lode mining claim, I MC 48355, abandoned and void because no proof of labor or notice of intent to hold was filed with BLM in 1980 as required by 43 CFR 3833.2.

Appellant states that he filed a proof of labor for his unpatented mining claims, I MC 48355, I MC 40980, I MC 50981, I MC 53032, I MC 54244, I MC 54245, and I MC 54246 in December 1981, and had received an acknowledgement from BLM in January 1982.

Appellant has misconstrued the BLM decision of April 6, 1982. The decision relates only to the Ding Bat #1 mining claim, I MC 48355, and to the failure of appellant to have filed a proof of labor for that claim in 1980. The Ding Bat #1 claim was located December 25, 1979, and recorded with BLM March 12, 1980. Appellant has not asserted he filed any proof of labor or notice of intent to hold the claim with BLM in 1980.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the location notice of the claim with BLM within 90 days after location, and to file a copy of a notice of intent to hold the claim or proof of labor prior to December 31 of each year after the calendar year during which the claim was located, both in the county recording office and with BLM. The statute provides that failure to make the filings required within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

Thus, the Ding Bat #1 claim, having been located in December 1979, was required by FLPMA to have a proof of labor or notice of intent to hold filed both in the county where the location notice is recorded and with BLM prior to December 31, 1980. As neither document was filed with BLM or with the county, the statutory consequences of conclusive presumption of abandonment attached by operation of law without any action or decision by any administrative official. Nicholaus P. Newby, 60 IBLA 264 (1981); Lynn Keith, 53 IBLA 92, 88 I. D. 369 (1981). In enacting FLPMA, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

